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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/919,233	07/31/2001	Donna D. Latham	11920-1380	5554

24504 7590 01/28/2003

THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP  
100 GALLERIA PARKWAY, NW  
STE 1750  
ATLANTA, GA 30339-5948

EXAMINER

RUDDOCK, ULA CORINNA

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 01/28/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/919,233	LATHAM ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Ula C Ruddock	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 06 November 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-6,10-19 and 23-44 is/are pending in the application.
- 4a) Of the above claim(s) 27-44 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-6,10-19 and 23-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \*   c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. The Examiner has carefully considered Applicant's amendments and accompanying remarks filed November 7, 2002.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Election/Restriction***

3. Applicant's election of Group I in Paper No. 7 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Rejections - 35 USC § 112***

4. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 26 has been amended to read on a fire-blocking fabric comprising a plurality of flame resistant fibers that are entangled to "a nonwoven scrim comprising at least one of melamine fibers, para-aramid fibers, meta-aramid fibers, and polybenzimidazole fibers wherein at least one of the fibers of the scrim comprises up to approximately 95% by weight of the scrim." The claim is considered indefinite because it is still unclear what exactly the scrim is made up of. It is the Examiner's interpretation that "up to 95%" includes 0% by weight and therefore, all the recited fibers are option. It is suggested that Applicant amend their claim to include that the "nonwoven scrim comprises more than 0% by weight and up to 95% by weight of the scrim." It should be

noted that for examination purposes, the Examiner will be interpreting the claim as simply encompassing a nonwoven scrim and a plurality of flame resistant fibers that are entangled to it.

***Claim Rejections - 35 USC § 102***

5. Claims 1,2, 4-6, 11 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Bailey et al. (US 4,943,465), as shown in Paper #6. Rejection is maintained.

***Claim Rejections - 35 USC § 102/103***

6. Claim 13 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C 103(a) as obvious over Bailey et al. (US 4,943,465), as shown in Paper #6. Rejection is maintained.

***Claim Rejections - 35 USC § 103***

7. Claims 10,12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey et al. (US 4,943,465), as set forth above, as shown in Paper #6. Rejection is maintained.

8. Claims 3,15-19, and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bailey et al. (US 4,943,465) in view of Ilg et al. (US 5,560,990) and Behnke et al. (US 4,120,914), as shown in Paper #6. Rejection is maintained.

***Response to Arguments***

9. Applicant's arguments filed November 6, 2002, have been fully considered but they are not persuasive for the reasons set forth. Applicant argues that Bailey et al. is a fire resistant composite, whereas Applicant's claims are drawn to a <sup>fabric</sup>~~composite~~. This argument is not commensurate in scope because the claims do not preclude the use of a <sup>composite</sup>~~fabric~~. Applicant also

argues that Bailey's scrim is on both sides of the paper, whereas Applicant's flame resistant fibers are entangled to the scrim on one side only. This argument is not persuasive because Applicant's claims read on "comprising" language, i.e. open ended. Furthermore, the claims do not preclude the use of an additional scrim layer. Applicant also argues that Bailey's high temperature resistant threads, whereas the present invention uses flame resistant fibers. This argument is not persuasive because Bailey et al. specifically teach that the scrim or scrims are attached to the paper by way of a network of high temperature resistant threads, (staple or continuous fibers) stitched through the scrim (col 6, ln 7-11). As a result, the threads of Bailey et al. are staple or continuous fibers. Furthermore, the high temperature resistant threads of Bailey et al. are the same as Applicant's flame resistant fibers because both Bailey et al. and Applicant use the same materials and therefore, do the same thing.

### ***Conclusion***

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C Ruddock whose telephone number is 703-305-0066. The examiner can normally be reached on Monday-Thursday.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

UCR *UCR*  
January 27, 2003

*Elizabeth M. Cole*  
ELIZABETH M. COLE  
PRIMARY EXAMINER